



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Brandall Modular Corporation

File: B-259095

Date: November 8 1994

DECISION

Brandall Modular Corporation protests award to any other bidder by the Department of the Navy under solicitation No. N62474-94-B-6785.

We dismiss the protest.

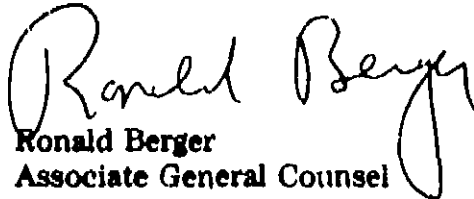
The solicitation was issued on August 18, 1994. Three bids were received and opened at the September 26 bid opening. Brandall was the apparent low bidder but appeared to take exception to the specification requiring that the contractor "perform independent of joint ventures and manufacture complete modules on his own premises, using his own in-house design and specifications." By letter of September 29, Brandall, as the low bidder, was requested to verify its bid and prices. By letter of the same day, Brandall verified its prices but again took exception to the specifications. The Navy rejected Brandall's bid as nonresponsive and made award to the next lowest bidder, PBS Building Systems, Inc., on September 30.

Brandall asserts that its bid should not have been rejected since the solicitation requirements to which it took exception in its proposal were unreasonable and that no bidder would be able to comply with this requirement. This argument is untimely since protests of allegedly improper solicitation provisions must be filed prior to the deadline for receipt of bids. 4 C.F.R. § 21.2(a)(1).

Brandall also argues that since no one can comply with the requirement, PBS's bid should also be rejected as nonresponsive. Unlike the protester, PBS, insofar as Brandall alleges, did not take exception to this requirements in its bid; by signing a bid without taking exception, a bidder is committed to performing in accordance with all solicitation requirements. Whether a bidder has the ability and intention of doing so is a matter for the contracting officer, in the exercise of his discretionary judgment, to consider in making his responsibility determination. Because such determinations are generally not susceptible to reasoned review, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials or that definitive responsibility criteria in the solicitation may

have been misapplied. 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. No such showing has been made here. Therefore, the protest provides no basis for us to object to the award to PBS.

The protest is dismissed.


Ronald Berger
Associate General Counsel